

Regulation 1602. FOOD PRODUCTS

Reference: Sections 6353 and 6359, Revenue and Taxation Code; California Constitution, Article XIII, Section 34.

(a) IN GENERAL. Tax does not apply to sales of food products for human consumption except as provided in Regulations 1503, 1574, and 1603. (Grocers, in particular, should note that tax applies to sales of "hot prepared food products" as provided in Regulation 1603(e).)

(1) "Food products" include cereal and cereal products, including malt and malt extracts, milk and milk products, including ice cream, ice milk and ice cream and ice milk novelties, sherberts, imitation ice cream and imitation ice milk, dried milk products, sugar of milk, milk shakes, malted milks, and any other similar type beverages composed at least in part of milk or a milk product and requiring the use of milk or a milk product in their preparation, oleomargarine, meat and meat products, fish and fish products, eggs and egg products, vegetables and vegetable products, including dehydrated vegetables, fruit and fruit products, spices and salt, coffee and coffee substitutes, tea, cocoa and cocoa products, sugar and sugar products, baby foods, bakery products, marshmallows, baking powder, baking soda, cream of tartar, coconut, flavoring extracts, flour, gelatin, jelly powders, mustard, nuts, peanut butter, sauces, soups, syrups (for use as an ingredient of, or upon, food products as defined herein), yeast cakes, olive oil, bouillon cubes, meat extracts, popcorn, honey, jams, jellies, certo, mayonnaise, and flavored ice products, including popsicles and snow cones. "Food products" include candy, confectionery, and chewing gum, ~~and snack foods except as provided in subdivisions (a)(3) and (a)(4) below.~~

(2) "Food products" include all fruit juices, vegetable juices, and other beverages, whether liquid or frozen, including all beverages composed in part of fruit or vegetable juice and concentrates, powders, or other bases for such beverages, and noncarbonated and noneffervescent bottled water intended for human consumption regardless of the method of delivery. "Food products" does not include carbonated or effervescent bottled waters, spirituous, malt or vinous liquors, or carbonated beverages.

~~For the period July 15, 1991 through November 30, 1992, "food products" does not include noncarbonated and noneffervescent bottled water. Sales of purified drinking water through vending machines or outlets in retail stores where the water enters the machine or outlet through local supply lines and is dispensed into the customer's own containers are exempt under Revenue and Taxation Code section 6353.~~

Tax does not apply to sales of water in bulk quantities of 50 gallons or more to an individual for use in a residence when that residence is not serviced by lines, mains or pipes.

~~(3) For the period July 15, 1991 through November 30, 1992, "food products" do not include nonmedicated chewing gum and breath mints.~~

(4) (3) "Food products" do not include medicines, cough drops, mineral oils, cigarettes, cigars, tobacco, coloring extract, ice, and dog, cat, bird and other animal foods, ~~and for the period July 15, 1991 through November 30, 1992, candy, confectionery, and snack foods.~~

~~(A) Snack Foods. For purposes of this section, "snack foods" means cookies, crackers (excluding soda, graham and arrowroot crackers), potato, corn, rice or tortilla chips, snack cakes or pies, pretzels, granola snacks, popped popcorn, fabricated chips and snacks.~~

~~1. "Snack foods" does not include doughnuts, breads, pastry and other bakery products (other than cookies, crackers, snack cakes and pies).~~

~~2. "Snack foods" does not include nuts or nut meats, seeds, or dried fruit snacks.~~

~~3. "Snack foods" does not include beef jerky and similar dried meat products, natural pork skins, hot dogs, franks, wieners, sausages, canned meat products, or sandwich meats whether sliced or unsliced.~~

~~4. "Soda crackers" are a thin, crisp saline wafer or biscuit made with flour, yeast, water, shortening, salt, and soda. The term does not include such bakery items, which are chemically leavened or contain one or more flavoring agents, for example, honey, sugar, or molasses. The term also does not include panned butter, malt, milk, fat sprayed, cheese, and pilot bread crackers.~~

~~(B) "Snack foods" means items which are sold in a condition suitable for immediate consumption without further processing such as cooking, heating, or thawing.~~

~~1. "Fabricated snacks" means snacks made from components, including food components, which are processed and formed. "Fabricated snacks" includes, but is not limited to, such items as grain cakes, shoestring potato snacks, food bars or squares, and extruded snacks. The term does not include "meal replacement bars" which supply, per serving (as defined by the manufacturer), at least 250 calories and 25% of the U.S. RDA of vitamins and minerals (as established by regulations of the United States Food and Drug Administration).~~

~~2. "Extruded snacks" includes, but is not limited to, curls, puffs, twists, balls, filled snacks, and pellet-based snacks.~~

~~(C) "Snack cakes or pies" means cakes or pies which are baked or fried in individual serving sizes or cut and pre-wrapped or pre-packaged for subsequent sale in individual serving sizes, whether sold individually or packaged together. A package of single serving items is subject to tax. The term does not include whole cakes or pies nor does it include a slice of pie or cake, which is not pre-wrapped or pre-packaged at the time of sale.~~

~~(D) "Granola snacks" means granola bars and squares but does not include granola sold in bulk, cereals, and trail mixes.~~

~~(E) Candy and Confectionery. For the period July 15, 1991 through November 30, 1992, tax applies to sales of candy and confectionery, which includes chocolate-coated nuts, candied fruits, crystallized fruits and glace fruits.~~

(5) (4) "Food products" do not include any product for human consumption in liquid, powdered, granular, tablet, capsule, lozenge, or pill form (A) which is described on its package or label as a food supplement, food adjunct, dietary supplement, or dietary adjunct, and to any such product (B) which is prescribed or designed to remedy specific dietary deficiencies or to increase or decrease generally one or more of the following areas of human nutrition:

1. Vitamins
2. Proteins
3. Minerals
4. Caloric intake

In determining whether a product falls within category (B), it is important whether the manufacturer has specially mixed or compounded ingredients for the purpose of providing a high nutritional source. For example, protein supplements and vitamin pills are taxable as food supplements.

Other items, such as cod liver oil, halibut liver oil, and wheat germ oil, are considered dietary supplements and thus subject to tax even though not specially compounded. However, unusual foods such as brewer's yeast, wheat germ and seaweed are not subject to tax except when their label states they are a food supplement or the equivalent. Finally, the compounding of nutritional elements in items traditionally accepted as food does not make them taxable, e.g., vitamin-enriched milk and high protein flour.

Tax, however, does not apply to any such products which either are exempted by Revenue and Taxation Code section 6369, respecting prescription medicines, or are complete dietary foods providing the user in the recommended daily dosage with substantial amounts of vitamins, proteins, minerals and foods providing adequate caloric intake. An example of the latter is a food daily providing the user with the following:

1. 70 grams of high quality protein
2. 900 calories

3. Minimum daily requirements as established by the regulations of the Federal Food and Drug Administration of the following vitamins: A, B1, C, D, Riboflavin, and Niacin or Niacinamide; and the following minerals: Calcium, Phosphorus, Iron and Iodine.

(b) SALES OF COMBINATION PACKAGES. When a package contains both food products (e.g., dried fruit) and nonfood products (e.g., wine, or toys), the application of tax depends upon the essential character of the complete

package. If more than 10 percent of the retail value of the complete package, exclusive of the container, represents the value of the nonfood ~~merchandise~~products, a segregation must be made and if the retailer has documentation that would establish the cost of the individual component parts of the package, with the tax measured by the retail selling price of such nonfood ~~merchandise~~products.

When the retailer does not have documentation that would establish the cost of the individual component parts of the package, and the package, exclusive of the container, consists of nonfood products whose retail selling price would exceed 10 percent of the retail selling price for the entire package, the tax may be measured by the retail selling price of the entire package.

If the retail value of the nonfood products is 10 percent or less, exclusive of the container, and the retail value of the container is 50 percent or less of the retail value of the entire package, the selling price of the entire package is not subject to tax.

(c) SALES OF NON-EDIBLE DECORATIONS. When the sale of a cake or other bakery good for a single price includes non-edible decorations, the application of tax depends upon the value of the non-edible merchandise versus the value of the cake or bakery good. If more than 50 percent of the total retail value of the cake or bakery good represents the value of non-edible decorations, a segregation must be made and the tax measured by the retail selling price of such non-edible decorations. If the price of the non-edible decoration is separately stated, then tax applies to such charge.

(d) FOOD PRODUCTS PROCESSED BY THE CONSUMER. A commodity included in the term “food products” under Revenue and Taxation Code section 6359 may be sold to a consumer to be processed and incorporated into a product which is for human consumption but which is excluded from the term “food products.” For example, grapes may be sold to be used in making wine for consumption and not for resale. If the commodity sold to the consumer is included in the term “food products” and if the product into which it is incorporated is for human consumption, the sale of the commodity is within the exemption provided by this section.